CANOPEE INVESTMENT PTE. LTD. & ORS.

v.

LANDMARKS HOLDINGS BHD. & ORS.

HIGH COURT MALAYA, KUALA LUMPUR
VC GEORGE J
[CIVIL SUIT NO. D2-22-79-87]
19 SEPTEMBER 1989

CIVIL PROCEDURE: *Award of costs - Successful defending of an interlocutory injunction - Uncommon points for consideration - Factors for taxing officer to take into account - Guideline for taxing officers.*

The plaintiff had obtained an *ex-parte* interim injunction restraining the defendants from requisitioning an extraordinary meeting of a public company and the defendants thereafter successfully prevented the grant of this injunction at the *inter-partes* hearing of the same.

The learned Judge who heard this case in his 28 page judgment pointed out that the cause of action here involved a point of law concerning the extent of the right of a pledgee of shares in a limited company to embroil himself in the affairs of that company which may result in a critical effect on the control of the pledgor over the affairs of the company and which may also have a devastating impact on the credibility of the pledgor and consequently on the value of the security. It appears that the point raised was not commonplace.

In his judgment the learned Judge recorded a debt of gratitute in respect of the "great assistance" he had obtained from the extensive legal researches that had been conducted by the teams of the lawyers for both sides.

In addition to the above the Judge had to consider a number of subordinate points including the allegation (and the effect of making them) of fraud and coercion and whether the matter should be heard in camera.

The defendants requested for a sum of RM1,500 as costs for getting-up and the taxing officer after review increased the amount to RM2,000. The defendants applied to the Judge for a review.

Held:

[1] There were novel points or uncommon points of law raised.

[2] The taxing officer would be well advised to give a monetary value to the action if this is possible and to apply the Subordinate Court Rules Scale with adjustments using the policy of the grading system therein to reflect the quantum of the subject matter where it is found to be over RM100,000;

[3] For the purposes of taxation of costs running actions could be considered to be the simplest of cases - it would attract the getting-up amount arrived or by applying the Subordinate Court Rules Scale (i.e. costs of suing and costs of advocacy). For the complicated case and those not so commonplace as running down actions there should be a gradual scaling upwards of costs for getting up from the starting point of what should be awarded in a running down action.

[4] When it is not possible to readily give a monetary value to the subject matter of the action the taxing officer should ask himself or herself how much more or less getting-up has to be done in the case than would have been done in a running down action and use the answer as a guide to adjust the quantum of the award.

[5] In all the circumstances the "getting up" in this matter should have been considered worth at least double what the getting-up fee in a RM100,000 running down action is worth - the costs of getting-up is increased to RM12,500.

[Order accordingly.]

Legislation referred to:
Subordinate Courts Rules 1980, O. 48 r. 12

For the plaintiff/respondents - Santha Lourdes; M/s. Azman, Davidson & Co.
For the defendant/appellants - C.S. Chan; Shearn Delamore & Co.

JUDGMENT

VC George J:

This is the review of the amount that was allowed for getting-up by the Registrar.

A starting point in considering the exercise of discretion by a taxing officer particularly in respect of the item "getting up" could be the fixed scale of costs set out in O. 48 r. 12 of the Subordinate Courts Rules of 1980. The fixed cost in the scale is in proportion to the quantum of the subject matter of the action. The scale is graded up to the maximum of the civil jurisdiction of a Sessions Court which is RM100,000. The cost fixed for advocacy is RM5450 and for defending or suing RM1375 to give a total of RM6825 for a successful party in an action where the subject matter of the action is RM100,000. The grading used after a basic amount at the lower end of the scale is an increase of the amount of costs for suing or defending by RM25 per RM1,000 and for advocacy by RM100 per RM1,000.

The taxing officer in the High Court would be well-advised to give a monetary value to the action if at all that is possible and when that has been done to apply the Subordinate Courts Rules scale with adjustments using the said policy of the grading system to reflect the quantum of the subject matter where it is found to be over RM100,000.

Now, for purposes of taxation of costs running down actions could be considered to be the simplest of cases. It should attract for getting-up about the amount arrived at by applying the Subordinate Courts Rules scale. For the more complicated cases and those not as commonplace as running down actions there should be a gradual scaling upwards of the cost for getting up from that starting point of what should be awarded in a running down action.

That is simple enough. The real problem is where it is not possible to readily give a monetary value to the subject matter of the action. Again what ought to be given in a running down action could provide a good guide. The taxing officer should ask himself or herself how much or less getting-up has to be done in the case than would have been done in a running down action and use the answer as a guide to adjust the quantum of the award.

In the instant case the defendants who had succeeded in preventing the grant of an injunction restraining the defendants from requisitioning an extraordinary meeting of a public company (in respect of which an interim *ex parte* injunction had earlier been obtained by the plaintiffs) had asked for RM15,000 for getting up. The learned Deputy Registrar initially taxed that down to RM1,500 and on review increased the amount from RM1,500 to RM2,000. He took the view that that was sufficient for getting-up. In his certificate he said:

I felt it was sufficient under the circumstances taking into account that there was no novel question involved requiring specialised knowledge in this matter.

I am afraid that view runs somewhat contrary to the view taken by the learned Judge who had disposed of the application. In his 28-page written judgment, *inter alia* he points out at p. 10 that the cause of action in the matter involves a point of law which Counsel arguing the case had told him had not been decided in any reported case in Malaysia or abroad. It concerns the extent of the right of a pledgee of shares in a limited company to embroil himself in the affairs of that company. "Untrammelled" says the Judge, "the exercise of such a right can have a critical effect on the control of the pledgor over the affairs of the company. It may also have a devastating impact on the credibility of the pledgor and consequently on the value of his security."

The learned trial Judge was M. Shankar J who before he was elevated to the Bench was among the leaders of the Bar in the commercial Courts and who had the benefit of the submissions of eminent Counsel arguing the application. Looking at his written judgment it is to be noticed that he was not prepared to say that the point was not novel. In any event even if it may not be novel it can be said without fear of contradiction that the point is not commonplace.

In concluding his written judgment the learned Judge considered it relevant to record a debt of gratitude in respect of the "great assistance" he had obtained from the extensive legal researches that had been conducted by the teams of lawyers for both sides. This again more than suggests that the matter was not run of the mill.

Apart from the pivoted point and some ramifications thereof the learned Judge had to consider a number of subordinate points including the allegation (and the effect of making them) of fraud and coercion and the principles which guide a Court in giving injunctions generally and particularly where mortgagees are involved.

One side issue of obvious public importance which the Judge had to and did consider at some length - in almost 10 pages of the written judgment - was the principles on which the Court should be persuaded to hear a matter *in camera* - the plaintiffs had unsuccessfully applied to have the application tried in chambers rather than in open Court.

In the face of all that I think the learned Deputy Registrar erred in holding that the case did not involve what could be considered novel or at worst uncommon question of law.

In all the circumstances the "getting-up" in this matter should have been considered worth at least double what the getting-up in a RM100,000 running down action is worth. I would have allowed RM12,500 for getting-up.

Accordingly the learned Deputy Registrar's certificate is amended to the effect that item 19 of the bill of costs is allowed at RM12,500. The cost of this review will be paid by the plaintiffs. I fix it at RM300.

Also found at [1990] 1 CLJ 466